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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,074	07/30/2001	Jurgen Beil	534P008	2565

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Docket for: 11-9-02
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EXAMINER
HAYES, BRET C

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 08/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/918,074	BEIL, JURGEN	
	Examiner	Art Unit	
	Bret C Hayes	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-18 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 21 August 2000. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 17 recites the limitation, "wherein the said plastic is in the form selected from the group consisting of..." and followed by a list of items that are not plastics, e.g. polyvinyl chloride, polyethylene, etc.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,333,405 to Bowles.

b. Bowles discloses the claimed method.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1 – 7 and 13 – 17 are rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent Nos. 4,957,787 to Reinhardt et al. in view of 4,887,376 to Sibley et al.

c. Regarding claims 1 and 14, Reinhardt et al. disclose the invention substantially as claimed. Reinhardt et al. disclose an aromatic and/or enticing article comprising a porous, thermoplastic plastic treated with at least one aromatic and/or enticing substance. However, Reinhardt et al. do not disclose the aromatic and/or enticing substance being fish-luring.

d. Sibley et al. teach articles treated with fish-luring aromatic and/or enticing substances for the purpose of attracting fish.

e. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Sibley et al. to modify Reinhardt et al. in order to treat articles with fish-luring aromatic and/or enticing substances.

f. Regarding claims 2 – 5 and 15, Reinhardt et al. in view of Sibley et al., as applied to claims 1 and 14 above, disclose the invention substantially as claimed. Reinhardt et al. disclose a material wherein "Generally the volume average diameter of the pores is in the range of from about 0.6 to about 50 micrometers. Very often the volume average diameter of the pores is in the range of from about 1 to about 40 micrometers. From

about 2 to about 30 micrometers is preferred," col 7, ln 5 – 10 and "volume average diameter of the pores of the precursor microporous material...is usually in the range of from about 0.02 to about 0.5 micrometers. Frequently the average diameter of the pores is in the range of from about 0.04 to about 0.3 micrometers. From about 0.05 to about 0.25 micrometers is preferred," col 9, ln 1 – 8.

g. Regarding claim 6, Reinhardt et al. in view of Sibley et al., as applied to claims 1 and 2 above, disclose the invention substantially as claimed. Reinhardt et al. disclose "pores constitut[ing] more than 80 percent by volume of the microporous material," col 6, ln 18 – 19 and "from about 35 to about 80 percent by volume of the precursor microporous material," col 8, ln 58 – 59.

h. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the void volume of the material be at least 50% as taught be Reinhardt et al.

i. Regarding claims 7 and 16, Reinhardt et al. discloses polyolefin.

j. Regarding claims 13 and 17, Reinhardt et al. in view of Sibley et al., as applied to claims 1 and 14 above, disclose the invention substantially as claimed. Reinhardt et al. disclose shaping the plastic into petal shapes and printing.

k. Sibley et al. teach fish-catching devices

l. It would be obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Sibley et al. to modify Reinhardt et al. to shape and print a fish-catching device of plastic.

8. Claims 8 – 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Reinhardt et al. in view of Sibley et al., as applied to claim 7 above, further in view of 3,351,495 to Larsen et al.

m. Reinhardt et al. in view of Sibley et al., as applied to claim 7 above, disclose the invention substantially as claimed. Reinhardt et al. disclose a material comprised of "at least 70 percent UHMW polyolefin," col 4, ln 11 – 12, "the filler constituting from about 50 percent to about 90 percent by weight of said microporous material," col 2, ln 16 – 18, and "the residual processing plasticizer content is usually less than 5 percent by weight of the precursor microporous [material]," col 8, ln 52 – 55. However, Reinhardt et al. in view of Sibley et al., as applied to claim 7 above, do not disclose the specifics of determining the molecular weight (weight average), a standard-load melt index, and a reduced viscosity.

n. Larsen teaches a polyolefin having a molecular weight (weight average) of at least 300,000, a standard-load melt index of substantially 0, and a reduced viscosity of not less than 4.0, col 1, ln 35 – 36, 8 – 100 percent volume percent of very high molecular weight polyolefin, 0 – 40 percent volume percent of a plasticizer, and 0 –92 percent volume of an inert filler material, col 1, ln 37 – 42, for the purpose of creating a polyolefin.

o. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Larsen to modify Reinhardt et al. in view of Sibley et al., as applied to claim 7 above, in order to achieve the desired plastic material.

p. Regarding claim 9, Reinhardt et al. in view of Sibley et al., in view of Larsen, as applied to claim 8 above, disclose the invention substantially as claimed. Larsen

discloses "8 – 93 volume percent polyolefin, 7 – 92 percent volume percent filler and 0 – 15 volume percent plasticizer," col 1, ln 43 – 45.

q. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use 15 – 60 vol. % polyolefin, 35 – 80 vol. % filler and 1 – 7 vol. % plasticizer, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

r. Regarding claim 10, Reinhardt et al. in view of Sibley et al., in view of Larsen, as applied to claim 8 above, disclose the invention substantially as claimed. Larsen et al. disclose polyolefins include polyethylene, col 2, ln 50 – 65.

s. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyethylene, since it was known in the art that polyethylene is a polyolefin plastic.

t. Regarding claims 11 and 12, Reinhardt et al. in view of Sibley et al., in view of Larsen et al., as applied to claim 8 above, disclose the invention substantially as claimed. Larsen et al. disclose finely-divided silica, col 4, ln 46, and the use of process oil, col 4, ln 67 – 74.

u. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use finely-divided silica and process oil as taught by Larsen et al.

Response to Arguments

9. Applicant's arguments with respect to claims 1 – 18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306-0553. The examiner can normally be reached Monday through Friday from 7:00 am to 4:30 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306-4159. The fax number for this group is (703) 305-7687.

CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
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bh

8/1/02